

HOUSE BILL 474

By Maddox

AN ACT to amend Tennessee Code Annotated, Section 34-11-103; Title 36; Title 37; Section 63-6-218 and Title 68, relative to the abandonment of infants.

WHEREAS, the general assembly recognizes the growing instances of infant abandonment throughout the United States and the state of Tennessee, and the detrimental effect infant abandonment has on children and families in the state of Tennessee; and

WHEREAS, the general assembly recognizes the need to provide a system through which parents may safely relinquish custody of unwanted newborns and to provide community educational outreach that will inform pregnant women of services and alternatives available through the department of health and the department of children's services; now, therefore, BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, is amended by adding the following Sections 2-19 as a new chapter.

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Abandonment" means the voluntary surrender by a parent of physical possession of an infant aged seventy-two (72) hours or less to a member of the professional medical community or emergency medical services provider, without an intent to return for the infant.

(2) "Emergency medical services provider" means an individual or institution providing services as defined in Tennessee Code Annotated, Section 68-140-502(11).

(3) "Licensed child-placing agency" means an entity or person as defined in Tennessee Code Annotated, Section 37-5-501(b).

(4) "Member of the professional medical community" means an individual or institution as defined in Tennessee Code Annotated, Section 68-140-202.

SECTION 3. A member of the professional medical community or an emergency medical services provider, shall, without court order, take physical possession of an infant aged seventy-two (72) hours or less who is voluntarily delivered to such person, provided that the circumstances give rise to a reasonable belief that the parent does not intend to return for the infant and the parent does not express an intent to return for the infant.

SECTION 4. A parent who surrenders an infant to a member of the professional medical community or an emergency medical services provider in accordance with Section 3 of this act is not required to provide any personal identification information, may leave at any time and shall not be pursued or followed. If the member of the professional medical community or emergency medical services provider actually knows or reasonably suspects the infant has been abused or neglected, the parent surrendering the child must provide identification information.

SECTION 5. A member of the professional medical community or emergency medical services provider who takes possession of a infant under this act shall perform any act necessary to protect the physical health or safety of the infant.

SECTION 6. If the infant is surrendered to a emergency medical services provider, the provider shall immediately deliver the infant to a hospital. Upon receipt of the infant, the hospital shall immediately contact a local licensed child-placing agency for purposes of transferring physical custody of the infant.

SECTION 7. The child-placing agency shall assume responsibility for all medical costs and all other costs associated with the emergency services and care of the infant. The licensed child-placing agency shall immediately seek an order from the circuit court for emergency custody of the infant. The emergency custody order shall remain in effect until the court orders preliminary approval of placement of the infant in a foster or adoptive home, at which time the prospective foster or adoptive parents shall become guardians pending termination of parental rights and finalization of adoption, or until the court orders otherwise.

SECTION 8. Immediately after receiving notice from a member of the professional medical community or emergency medical services provider, the licensed child-placing agency shall contact the Tennessee bureau of investigation for assistance in assuring that the infant is not a missing infant. The bureau of investigation shall treat the request as ongoing for a period of thirty (30) days and shall contact the department if a missing infant report is received that might relate to the surrendered infant.

SECTION 9. A parent of an infant that has been surrendered in accordance with the provisions in this act may return to reclaim the infant at any time prior to termination of parental rights. If the parent returns to reclaim the infant, the licensed child-placing agency shall, prior to releasing the infant, verify the identity of the person and conduct an assessment of the person's ability to parent. The department shall also, in its assessment, discuss adoption and foster care as alternatives and make a determination as to whether there is a substantial risk of abuse or danger to the infant. If the agency determines that the infant is not in danger of abuse, neglect, or other harm, then the infant shall be released to the parent.

SECTION 10. A parent who leaves an uninjured infant with a member of the professional medical community or emergency medical services provider shall not be prosecuted for any criminal offense if the parent acts in full compliance with the provisions of this act. It is affirmative defense to prosecution under Tennessee Code Annotated, Sections 37-

1-157 and 39-15-401, if the parent voluntarily delivers the infant to a member of the professional medical community or emergency medical services provider pursuant to Section 3 of this act.

SECTION 11. No person shall be subject to civil or administrative liability for accepting and caring for the infant in accordance with Tennessee Code Annotated, Section 63-6-218, or any of the provisions of this act, provided that the person complies with all provisions of this act.

SECTION 12. Within seven (7) days of accepting physical custody of the infant, the licensed child-placing agency shall initiate a search to identify and notify a parent whose identity or location is unknown, other than the parent who has surrendered the infant in accordance with this act. The search shall include but not be limited to:

- (a) inquiries of all known relatives of the parent;
- (b) inquiries of all offices or program areas of the department likely to have information about the parent;
- (c) inquiries of other state and federal agencies likely to have information about the parent;
- (d) inquiries of appropriate utility and postal providers; and
- (e) inquiries of appropriate law enforcement agencies.

SECTION 13. The licensed child-placing agency shall provide constructive notice of the petition to terminate parental rights in the county where the infant was surrendered and the county where the petition will be heard. The constructive notice must include, but not be limited to, available identifying information, and information on whom a parent must contact in order to assert a claim of parental rights of the infant and how to assert that claim. If a parent is identified and located, notice of the adjudicatory hearing shall be provided to that parent. If a parent can not be identified or located subsequent to the agency's search, the agency shall file an affidavit stating that a search has been performed in accordance with this act at the same time the petition to terminate parental rights has been filed.

SECTION 14. The petition to terminate parental rights shall not be filed until thirty (30) days after the date the infant was surrendered to the member of the professional medical community or the emergency services provider.

SECTION 15. The department of health, in conjunction with the department of children's services and the department of education, shall establish, promote and maintain a program to raise public awareness of the incidents of infant abandonment and to provide information and intervention services for parents of unwanted infants. The program shall provide the following services:

- (a) An outreach campaign utilizing print, radio, and television public service announcements, advertisements, posters and other materials;
- (b) Educational seminars in community forums;
- (c) Information on adoption and foster care programs;
- (d) Assessing and targeting at-risk populations;
- (e) Providing reliable information to policymakers;
- (f) Ensuring that members of the professional medical community and emergency medical services providers are clearly designated or publicly known as safe havens for surrendering infants;
- (g) Distributing information through county health departments, schools, physicians, health maintenance organizations, emergency medical services providers, women's groups, nonprofit organizations, community health organizations, community-based organizations and departmental regional offices;
- (h) Incorporating into the elementary and secondary school health education curriculum for grades seven (7) through 12 (twelve), information on teen pregnancy prevention, prenatal counseling, health services, adoption, foster care, family planning services and the provisions of this act; and

(i) Any additional services the department of health or the department of children's services deems necessary to effectuate the purposes of the program;

SECTION 16. Pursuant to Tennessee Code Annotated, Section 37-3-501, the department of health shall incorporate information regarding safe havens for surrendering infants and alternatives to infant abandonment into the existing informational clearinghouse on teenage pregnancy. Such information shall be available through the clearinghouse toll-free telephone line.

SECTION 17. The department of children's services and the department of health are, through their respective commissioners, vested with all necessary and incidental powers for carrying into effect the purposes and programs set forth in this chapter.

SECTION 18. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 19. The provisions of this act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the general appropriations act.

SECTION 20. Tennessee Code Annotated, Section 36-1-102, is amended by adding the definition of abandonment provided herein in Section 2. Abandonment as defined in Section 2 of this part is a basis for termination of parental rights. However, parental rights shall not be terminated earlier than forty-five (45) days after the infant is surrendered.

SECTION 21. This act shall take effect on July 1, 2001, the public welfare requiring it.